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UNCLAS SECTION 01 OF 04 TEGUCIGALPA 002972

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SUBJECT: HONDURAN-U.S. BILATERAL TRADE AND NON-TRADE ISSUES
AFFECTING USCAFTA

REFS: A) SECSTATE 203301

- B) SECSTATE 207175
- C) TEGUCIGALPA 728
- D) TEGUCIGALPA 1951
- E) TEGUCIGALPA 2307
- F) TEGUCIGALPA 2207
- G) TEGUCIGALPA 2857
- H) TEGUCIGALPA 2897
- I) TEGUCIGALPA 1920
- J) TEGUCIGALPA 1756
- K) TEGUCIGALPA 2829
- L) TEGUCIGALPA 2916

1. (U) In response to refs a & b, Post identifies the following outstanding bilateral trade and non-trade issues that could negatively impact perception of a U.S.-Central American free trade agreement in the U.S. private sector and Congress.

Agriculture Import Restrictions

2. (U) Honduras has had a ban on U.S. raw poultry imports for some time. USDA FAS estimates that if Honduran restrictions on U.S. raw poultry and poultry parts were lifted, U.S. producers could export an additional USD 10 million of poultry products to Honduras, annually.

3. (U) Since President Maduro took office on January 27, Embassy has received a series of complaints from local importers regarding import restrictions, difficult certification requirements and other obstacles to the importation of U.S. pork, poultry and dairy products. GOH agriculture officials, in increasing the bureaucratic requirements to import U.S. products, appear bent on using sanitary and phytosanitary (SPS) measures as a way to restrict imports and support local poultry and pork producers. GOH officials, in turn, claim that Honduran importers provide partial documentation, either for purposes of tax evasion or in order to evade SPS restrictions on products from third countries. U.S. companies Cargill and PriceSmart (a subsidiary of Costco) have been among the companies complaining in 2002 of import obstacles. Post notes that in 2001, Honduras imported USD 6.1 million of U.S. dairy products, USD 6 million of U.S. pork products, USD 3.5 million of U.S. poultry products.

4. (U) In February, several Honduran importers of U.S. meat and dairy products complained to the Embassy that Honduras' Office of Plant and Animal Health (SENASA) was denying applications for the importation of goods from the United States on the basis that the plants producing the food products had not been certified by SENASA (ref c). SENASA Director Reyes explained that the actions were being taken not on the basis of Honduran phytosanitary law but due to a Honduran implementing regulation adopted in late 2001 and that the GOH believes its actions are consistent with its WTO commitments. He committed to ensuring the clearance of all U.S. agriculture imports as soon as the importers fill out applications for pre-certification. While the complaints have lessened since that time, there have been some sporadic incidents over this requirement.

5. (U) In June, SENASA began restricting imports of U.S. poultry products over concerns of an outbreak of avian influenza in the U.S. After some negotiation, GOH officials agreed to allow poultry imports if and when USDA certifies that the products originate from a zone free of avian influenza (ref d). The ensuing back and forth on whether USDA can certify poultry products free of low pathogen avian influenza delayed entry of cooked and mechanically deboned poultry meat into the Honduran market. USDA FAS is aware of several U.S. suppliers that have turned away from selling to Honduras because of these reported difficulties.

16. (U) There doesn't seem to be any legitimate health concern over U.S. pork imports, which SENASA began restricting in June and July (ref e). The GOH indicated privately to importers that it is interested in limiting the number of containers from certain companies (ostensibly over concerns that importers don't have the necessary cold storage capacity to handle the amount of imports). After discussions with Embassy and importers about paperwork requirements, GOH obstacles to pork product imports from the U.S. began to ebb.

17. (U) In October, in response to an announcement by USDA of a recall of turkey products originating from certain plants in the U.S. due to listeria, SENASA announced that it would restrict imports of U.S. turkey, chicken and other products susceptible to listeria. Without consultation or prior notice, SENASA told importers it requires FSIS or APHIS to certify that these products are free of listeria and newcastle disease. Embassy has begun discussions with SENASA officials over USDA's zero tolerance policy for listeria in cooked and processed food, and appropriate action on raw turkey. We expect this issue to be problematic in the near term.

18. (U) Post is also concerned that the GOH is not giving advance notice of changes in import regulations as required by WTO rules. We are skeptical that SENASA is applying equivalent SPS treatment to domestic poultry and pork products.

IPR Issues

19. (SBU) U.S. pharmaceutical company Pfizer has complained that the Ministry of Health, in approving a competing company's pharmaceutical product, did not respect Pfizer's data exclusivity rights as guaranteed in article 77 of Honduras' Industrial Property Law and article 39 of the WTO TRIP's agreement. The Ministry of Health approved the pharmaceutical product, despite communication from Honduras' IPR Division that Pfizer's research and data were protected under Honduran law. Pfizer argues that in order for the competing product to be legally registered with the Ministry of Health, the company needs to provide the research and data to support their application. Honduran law provides five-year exclusive use of data provided in support of registering pharmaceutical products.

10. (U) U.S. companies, through the Business Software Alliance (BSA), complain that attempts to prosecute computer software infringement cases have been met with resistance by officials in the Ministry of Industry and Trade's IPR Division and the GOH's Attorney General's Office who often cite procedural problems or lack of resources as the main causes of government inaction.

11. (U) Honduras largely complied with the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement by the January 1, 2000 deadline. However, there has been no action by the GOH to obtain approval of two laws governing the designs of integrated circuits and plant variety protection in the National Congress. Approval of the two laws is necessary for Honduras to be in complete TRIPS compliance.

AES

12. (SBU) U.S. energy company AES is the only U.S. finalist in the current bidding for a 210 MW tender by the GOH (refs f, g & h). AES has plans to build a usd 650 million liquid natural gas-fired power plant with transmission lines and LNG port that would serve Honduras, El Salvador and other countries in the region. General Electric is a strategic partner in this project. The state-run electricity company (ENEE) has delayed announcement of the winner, presumably because of heavy pressure by Honduran competitors in the thermal and hydropower sector. While the Maduro administration has assured that the 210 MW tender will be fair and transparent, the government-controlled process provides ample opportunity for discretion and manipulation. One possible issue is that one domestic firm, which bid low, did not include the price of constructing a new substation and accompanying power lines in its bid offer. Presumably this company should be disqualified.

Property, Investment and Commercial Disputes

13. (SBU) The Embassy has files on over 150 property and investment cases involving U.S. citizens. The 2002 Helms Act report (ref I) includes 9 cases that could be termed expropriation without adequate compensation, under the definition used in the Helms Act. Eight of the claims described in the Helms Act report involve the Honduran National Agrarian Institute (INA) and land invasion by

squatters. Land invasions are common for both Honduran and foreign landowners. According to the National Agrarian Reform Law, idle land fit for farming can be expropriated and awarded to the landless poor. Generally, an INA expropriation case begins after squatters target and invade unprotected property. The squatters then file for the land with the INA under the Agrarian Reform Law. In most cases, pursuit of the subsequent legal avenues has proven to be costly and time consuming, and has rarely lead to positive results. Representatives in the U.S. Congress have been contacted about land cases in Honduras, especially Senator Graham of Florida who has been contacted by four constituents about their cases.

14. (SBU) Post demarched the Honduran government repeatedly in 2001 and 2002 on the importance of establishing a mechanism that will allow progress on expropriation cases involving U.S. citizens (ref j). In late August, the GOH informed us that they are pursuing our recommendation of letting land cases involving the Honduran or municipal government be resolved in arbitration rather than through the courts (this will require legislation, which has not yet been submitted to Congress). Note: Honduras' first experience with arbitration involving a private dispute between U.S. and Honduran companies does not bode well; the U.S. company is now appealing the arbitral award to its former subcontractor, alleging corruption. End note.

15. (SBU) The Embassy is aware of numerous other property and investment disputes involving U.S. investors, the majority of which have arisen out of inadequate titling procedures or fraudulent business dealings and involve disputes between U.S. and Honduran citizens. In many of the private disputes between U.S. and Honduran citizens, the U.S. citizens charge unfair, often egregious, treatment in the court system. Most of these problems arose under previous administrations. In the case of the Moore family in Roatan, however, an unwarranted eviction from their property occurred in August (ref k). While the case has received widespread attention, there has not yet been a favorable result.

16. (SBU) U.S. Tobacco and textile company JE Morgan have both had difficult and prolonged labor cases that arose when the companies tried to investigate or dismiss key employees. (Note: In the case of U.S. Tobacco, the dismissed employee is a U.S. citizen and the Embassy is therefore limited in its role. End note.) In both cases, the employees have gone to the labor courts requesting extremely high severance packages. Texaco has complained of undue delays and lack of due process in its contractual dispute with a franchisee. Transpacific Geothermal has complained that slow, inefficient court proceedings have unjustifiably tied up the company's bid to build a small geothermal energy project in Western Honduras. (Note: Another U.S. citizen is suing the GOH over a former mining concession on the land. End note.) U.S. companies have also complained about judicial procedures that inhibit the return of stolen property. Several U.S. companies and investors have complained of arbitrary and unfair environmental permitting procedures, although this appears to have improved significantly under the Maduro administration. The U.S. companies have alleged unfair treatment in the courts and indicated that the state of the judicial system has dissuaded them from any new investments.

Labor

17. Although not mentioned in other Central American posts' cables on bilateral trade and non-trade issues affecting U.S.-CAFTA, civil society in Central America and the U.S. have voiced concern over labor issues throughout the region and are likely to press for improvement in the labor situation and swifter action to eradicate the worst forms of child labor as conditions for a trade agreement. Concerns frequently mentioned by international labor organizations and NGOs, especially in the maquila sector, include challenges to and problems with the freedom of association, the right to organize, the right to strike and the right to collectively bargain. These rights are generally respected in practice, but enforcement is weak. While many Central American countries, including Honduras, are party to ILO Convention 182 to eradicate the worst forms of child labor, the private sector - particularly in coffee, melon, sugarcane, and lobster agroindustrial production for export - continues to employ children in hazardous agricultural activities in which the minors also lose opportunities for schooling (see ref L). Other illicit activities in which minors engage in throughout Central America and which are even more difficult to enforce include commercial sex exploitation in tourist and border areas and illegal narcotics smuggling in the border areas and the Caribbean coast. (Note: There are numerous regional projects supported by USDOL with the goal of working to eradicate the worst forms of child labor. End Note.)

Other Issues

118. (SBU) The GOH provides extensive tax incentives to foreign and domestic companies, especially in the apparel assembly sector and widely defined tourism. Companies operating in designated export processing zones are exempt from paying import duties on goods and capital equipment and from state and municipal taxes. In the lead up to the initiation of the Doha round, the GOH put priority on maintenance of its incentives regime. The GOH will continue to provide incentives through 2010 per WTO rules allowing countries with GDP per capita under USD 1,000 to maintain free trade zones. Previously negotiated contracts with franchisees provide tax incentives to some Honduran owners of fast food outlets for another 15 years. Electric power producers are allowed to import fuel duty free, but some national firms may be taking advantage of the tax exemption to evade taxes on the sale of refined oil products. Embassy understands that investment incentives are an issue in the Canada-Central America free trade talks. International donors, including the IMF, IDB and World Bank, have identified the GOH's extensive tax exemptions as a main contributor to the Government's perennial fiscal problems. During U.S.-CAFTA talks, U.S. negotiators should be aware of the interplay of the trade and fiscal issues.

119. (SBU) The IMF and the World Bank are looking closely at the fragile financial sector in Honduras. The Honduran banking system is considered weak and in need of consolidation. Insider abuses and heavy losses in key sectors have combined to contribute to a large overhang of bad loans. Problems in the financial sector affect interest rates and the availability of medium and long-term lending. During the U.S.-CAFTA trade talks on financial services, U.S. negotiators should be aware of the measures the IMF and World Bank are recommending to strengthen the banking sector.

120. (U) We also note that Honduras has failed to implement fully its customs valuation obligations. The U.S.-CAFTA negotiations could be used to push for more complete implementation of the WTO customs valuation agreement.

Pierce